

Comments from EPA
ODEQ Memo from Ryan Michie, September 27, 2011
“Summary of proposed Mid-Coast category 4B Elements”

1.a. Segment Description

It seems that ODEQ's intention (a good one) is to also address impaired, but unlisted streams. It would be good to include this.

1.b. Impairment and pollutant causing impairment

It seems like whether the Mid-Coast goes the 4b or TMDL route, ODEQ will find and address sediment-impaired, but unlisted waters. It's important to define what the target will be to assess impairment. This will then give the full scope of all waterbodies to be addressed (or the process used to find all the waterbodies).

1.c. Sources of pollutant causing impairment

Comment 1:

This section indicates that “The riparian condition in some agricultural areas is also a potential source along with the lack of wood being a causative factor.”

The lack of wood, especially wood that's large enough to remain in place during flashy, high flow events, is clearly a causative factor for sediment and temperature problems in the Mid-Coast. Unfortunately, the 4b analysis does not include a review of the lack of LWD and its subsequent impacts. This component needs to be addressed.

Comment 2:

The second bullet states that “Landslide related sediment production/delivery from land management activities will be calculated with the LAPSUS model. Both natural and management related conditions will be evaluated.” How will the assessment determine the difference between natural and management related conditions, especially on private lands?

2. a. Description of Pollution Controls....

Reference sites in the Mid-Coast will likely be sites that have at one point in time been impacted by timber management activities. Is there any certainty that the proposed baseline reference sites truly represent a non-impacted site or a fully recovered site?

2.e. Description of requirements...

Comment 1:

A big challenge is how to have enforceable agreements with private landowners, which 4b requires.

Comment 2:

It seems where there are 303(d) sediment listings on private timber lands, OFP regulations are the “governing rules”. Because ODF rules do not support State’s water quality standards, DEQ would need to establish additional provisions beyond OFP regulations from the very start of this process for 4b to be considered. The proposal that DEQ and ODF would work on basin wide rule changes is not reassuring. History has shown that ODF Basin wide rule changes are very slow and very difficult to attain, and there is no certainty that the needed rule changes would actually happen.

However, if all of the 303(d) sediment listings to be addressed in this TMDL are on federal lands, an argument could be made that there is a management program in place (Northwest Forest Plan) that will eventually lead to compliance with the State’s water quality standards. This might be a more supportable argument for a 4b approach.

Comment 3:

Based on our call, MOA should be changed to MAO.

Comment 4:

As far as a road inventory is concerned, the 4b would likely need the inventory, protocol for problem identification, and the timeline and criteria for the appropriate control actions. We would also need assurances about who was going to do the work and that this portion of the implementation plan was enforceable. I would refer you to the Bear Valley, ID 4b that we forwarded to you, as an example of how this could play out.

4. Schedule for Implementing Controls

EPA would like to see some commitment for the obligation of funds for the implementation plan.

General Comments

It seems that there are pros and cons to choosing a 4b over a TMDL. It looks like it might be easier to get the 4b past public opinion and stakeholder buy-in, but that also looks like it will require a greater level of commitment on ODEQ’s part. The biggest hurdle in getting a 4b approved will likely be proving the enforceable authority of the implementation plan. Without that, a 4b will not be possible.

Both a 4b and a TMDL will require targets to be determined, and while a TMDL does require the inclusion of a daily load, the daily load does not need to be used to determine compliance or progress towards meeting WQS. Both use adaptive management and can be modified as new information becomes available. Implementation of both generally relies on a water being listed, or a demonstrated impact (from upstream, for example) on a listed water.

A 4b will require a more definitive link between controls and source of impairment and the basis upon which the State believes the controls will lead to attainment of the applicable WQS. A 4b also requires more specifics about the timeline of control implementation and the timeline for attainment of WQS. These are not as rigorous for a TMDL.

A question for ODEQ:

Have any controls already been implemented? If so, that could make it a bit easier to justify a 4b.